

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDINGS CORPORATIONS¹, et al.

Debtors.

Chapter 11

Case No. 18-23538 (RDD)
(Jointly Administered)

Re: Docket No. 1774

Obj. Deadline: January 31, 2019 at 4:00 p.m. (ET)

**OBJECTION OF TRINET ESSENTIAL FACILITIES XXVII, INC. TO
SUPPLEMENTAL NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND
ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN
CONNECTION WITH GLOBAL SALE TRANSACTION**

Landlord Trinet Essential Facilities XXVII, Inc. (“Trinet”), by and through its undersigned counsel, respectfully submits this objection and reservation of rights (the “Objection”) to the Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Global Sale Transactions (the “Notice”) [Docket No. 1774]. In support of this Objection, Trinet represents as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors’ corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

BACKGROUND

1. On October 15, 2018, the above captioned debtors and debtors-in-possession (collectively hereafter, “Debtors”) filed their voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code.

2. Trinet is the lessor for the non-residential property commonly known as 8440 South Hardy Drive, Warner Crossing Building C, Tempe, Arizona (the “Property”) pursuant to the Lease Agreement, dated February 13, 1997 and amended from time to time, including the Third Amendment to Lease, dated as of June 26, 2015 (collectively, the “Lease”).

3. On January 23, 2019, Debtors filed and served the Notice proposing the potential assumption and assignment of the Lease in conjunction with the Global Asset Sale Transaction and providing a cure amount. Objections to said Notice are due on January 31, 2019.

OBJECTION

4. Trinet objects to the proposed cure amount of \$52,217.50 as it is incorrect. The correct amount due as of February 1, 2019 is \$76,199.46 (the “Cure Amount”) as per the accounting attached hereto as Exhibit A. The amounts due consist of the February 2019 rent, 2018 CAM charges and various over and under payments by the Debtors.

5. The Cure Amount represents the amounts due to Trinet as of February 1, 2019. If the Cure Amount increases prior to any approved assumption and assignment of the Lease, Trinet reserves all rights to amend or supplement the Cure Amount.

6. The asset purchase agreement (“APA”) between Debtors and Buyer [Docket No. 1730] provides that the Buyer may assign the subject leases to “Assignees” identified by the Buyer. APA sections 2.7(a) and 5.2(a). “Assignees” is broadly defined in the APA and thus a proposed assignee of Trinet’s Lease may not be adequately disclosed at this time. To the extent

the proposed Assignee is not the Buyer, Trinet is entitled to receive adequate assurance information from a newly designated Assignee and reserves all rights to object further to the proposed assignment if the newly designated Assignee fail to prove it can perform all obligations under the Lease.

RESERVATION OF RIGHTS

7. Trinet reserves all rights under the Lease, the Bankruptcy Code, or applicable law, including but not limited to supplementing or modifying its Cure Amount, to object to an improperly designated Assignee or assert any further objections as Trinet may deem to be appropriate.

JOINDER

8. Trinet joins in the objections to the Debtors' requested relief asserted by other landlords and parties-in-interest to the extent said objections are not inconsistent with those asserted herein by Trinet.

CONCLUSION

9. WHEREFORE, Trinet respectfully requests the Court to sustain Trinet's objections and require the assumption and assignment of the Lease be conditioned upon the prompt payment of the Cure Amount and the ongoing performance of the Debtors or the Assignee of all Lease terms. Trinet also requests it be granted such other and further relief as the Court deems appropriate.

Dated: January 30, 2019

LUBIN OLSON & NIEWIADOMSKI LLP

By: /s/ Dennis D. Miller

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ATTORNEYS FOR CREDITOR
Trinet Essential Facilities XXVII, Inc.

1/28/2019 11:13 AM

Aging Detail

DB Caption: **Live** ISTAR Tenant: t0000071 Status: Current, Past, Future Age As Of: 02/28/2019 Post To: 02/2019

Property	Customer	Lease	Status	Tran#	Charge	Date	Month	Current	0-30	31-60	61-90	Over	Pre-	Total
					Code			Owed	Owed	Owed	Owed	90 Owed	payments	Owed
Warner Crossing 8440 (pwarn844)														
Sears, Roebuck and Company (t0000071)														
pwarn844	Sears, Roebuck and Company		Current	R-8643	Prepay	3/6/2018	03/2018	0.00	0.00	0.00	0.00	0.00	-2,708.00	-2,708.00
pwarn844	Sears, Roebuck and Company		Current	R-9106	Prepay	4/3/2018	04/2018	0.00	0.00	0.00	0.00	0.00	-143.06	-143.06
pwarn844	Sears, Roebuck and Company		Current	C-15976	OPP	7/31/2018	07/2018	13,676.42	0.00	0.00	0.00	13,676.42	0.00	13,676.42
pwarn844	Sears, Roebuck and Company		Current	C-15977	STX	7/31/2018	07/2018	314.56	0.00	0.00	0.00	314.56	0.00	314.56
pwarn844	Sears, Roebuck and Company		Current	C-15978	REP	7/31/2018	07/2018	-1,783.14	0.00	0.00	0.00	-1,783.14	0.00	-1,783.14
pwarn844	Sears, Roebuck and Company		Current	C-15979	STX	7/31/2018	07/2018	-41.02	0.00	0.00	0.00	-41.02	0.00	-41.02
pwarn844	Sears, Roebuck and Company		Current	C-15980	INP	7/31/2018	07/2018	594.09	0.00	0.00	0.00	594.09	0.00	594.09
pwarn844	Sears, Roebuck and Company		Current	C-15981	STX	7/31/2018	07/2018	13.67	0.00	0.00	0.00	13.67	0.00	13.67
pwarn844	Sears, Roebuck and Company		Current	C-18071	BRO	12/1/2018	12/2018	0.01	0.00	0.00	0.01	0.00	0.00	0.01
pwarn844	Sears, Roebuck and Company		Current	C-18901	INC	1/1/2019	01/2019	28.80	0.00	28.80	0.00	0.00	0.00	28.80
pwarn844	Sears, Roebuck and Company		Current	C-18902	STX	1/1/2019	01/2019	0.66	0.00	0.66	0.00	0.00	0.00	0.66
pwarn844	Sears, Roebuck and Company		Current	C-18905	OPC	1/1/2019	01/2019	445.00	0.00	445.00	0.00	0.00	0.00	445.00
pwarn844	Sears, Roebuck and Company		Current	C-18906	STX	1/1/2019	01/2019	10.24	0.00	10.24	0.00	0.00	0.00	10.24
pwarn844	Sears, Roebuck and Company		Current	C-18907	REC	1/1/2019	01/2019	51.00	0.00	51.00	0.00	0.00	0.00	51.00
pwarn844	Sears, Roebuck and Company		Current	C-18908	STX	1/1/2019	01/2019	1.17	0.00	1.17	0.00	0.00	0.00	1.17
pwarn844	Sears, Roebuck and Company		Current	R-12976	Prepay	1/14/2019	01/2019	0.00	0.00	0.00	0.00	0.00	-23.14	-23.14
pwarn844	Sears, Roebuck and Company		Current	C-19477	BRO	2/1/2019	02/2019	52,217.50	52,217.50	0.00	0.00	0.00	0.00	52,217.50
pwarn844	Sears, Roebuck and Company		Current	C-19478	STX	2/1/2019	02/2019	1,201.00	1,201.00	0.00	0.00	0.00	0.00	1,201.00
pwarn844	Sears, Roebuck and Company		Current	C-19479	INC	2/1/2019	02/2019	437.80	437.80	0.00	0.00	0.00	0.00	437.80
pwarn844	Sears, Roebuck and Company		Current	C-19480	STX	2/1/2019	02/2019	10.07	10.07	0.00	0.00	0.00	0.00	10.07
pwarn844	Sears, Roebuck and Company		Current	C-19481	MGT	2/1/2019	02/2019	1,250.38	1,250.38	0.00	0.00	0.00	0.00	1,250.38
pwarn844	Sears, Roebuck and Company		Current	C-19482	STX	2/1/2019	02/2019	28.76	28.76	0.00	0.00	0.00	0.00	28.76
pwarn844	Sears, Roebuck and Company		Current	C-19483	OPC	2/1/2019	02/2019	3,711.00	3,711.00	0.00	0.00	0.00	0.00	3,711.00
pwarn844	Sears, Roebuck and Company		Current	C-19484	STX	2/1/2019	02/2019	85.35	85.35	0.00	0.00	0.00	0.00	85.35
pwarn844	Sears, Roebuck and Company		Current	C-19485	REC	2/1/2019	02/2019	6,667.00	6,667.00	0.00	0.00	0.00	0.00	6,667.00
pwarn844	Sears, Roebuck and Company		Current	C-19486	STX	2/1/2019	02/2019	153.34	153.34	0.00	0.00	0.00	0.00	153.34
Sears, Roebuck and Company								79,073.66	65,762.20	536.87	0.01	12,774.58	-2,874.20	76,199.46
pwarn844								79,073.66	65,762.20	536.87	0.01	12,774.58	-2,874.20	76,199.46
Grand Total								79,073.66	65,762.20	536.87	0.01	12,774.58	-2,874.20	76,199.46

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